IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 155 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMVIR JAYRAMBHAI SHRIVAS (NAI)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 155 of 2004

MR MM TIRMIZI for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

MS MITA S PANCHAL AGP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 29/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this

petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 27/11/03 passed by respondent no.2 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that four F.I.Rs. were registered against him before different Police Stations at C.R.No.3259/2002, 524/2003, 1563/2003 & 5334/2003 on 12/10/03, 16/03/03, 22/10/03 & 21/11/03 respectively for offences punishable u/s.66, 65 & 81 of the Bombay Prohibition Act, 1949.

3. On the strength of the aforesaid registered offences, the detaining authority found that the petitioner was required to be detained, with a view to prevent him from indulging in bootlegging activities which amounted to a threat to public order. Accordingly, the impugned order of detention was passed against the petitioner.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended that certain documents were demanded by the petitioner by representation dated 10/12/03. That despite demand the said documents were not supplied, and therefore, the petitioner could not effectively represent his case and the constitutional right of the petitioner to submit an effective representation has been defeated. That, therefore, the order of detention is illegal and hence, it may be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

6. During the course of hearing, the learned advocate for the petitioner has produced a report of the F.S.L. and a communication received from the Commissioner of Police, Ahmedabad. They are taken on record. The learned advocate for the petitioner has argued that despite demand of certain documents, the copies thereof have not been supplied and the report of the F.S.L. was supplied very late. Therefore, the petitioner could not submit an effective representation against his detention.

7. On going through the F.S.L. report, it is clear that the report is dated 18/11/03 and the copy thereof was supplied to the petitioner on 13/01/04. It is not clear as to the date on which the said report was received. Therefore, in absence of any further material on record, it transpires that the copy of the F.S.L. report was not promptly supplied to the petitioner and therefore, the petitioner could not make an effective representation at the earliest possible time.

8. It has also contended that the statements of the witnesses were called for by the petitioner through the aforesaid representation. The said representation shows that the statements of some Police Constables were required by the petitioner. The affidavit filed by the detaining authority shows that the statements of witnesses were supplied, but, the statements of the F.S.L. Officer, the Investigating Officer and the Police officials who had carried the muddammal, have not been recorded.

9. In the present case, we find that the statement demanded by the petitioner by way of the aforesaid representation is that of police constable Natwar Kantibhai. It seems he is shown as a witness to the raiding party. Therefore, ordinarily, his statement would have been recorded by the I.O.. However, no further clarification is found from the affidavit of the detaining authority. It, therefore, shows that the copy of the statement of the said witness was not supplied to the said petitioner, and therefore, the petitioner could not effectively submit his representation against his detention.

10. It is well settled that a right to submit an effective representation is a constitutional right guaranteed by Article 22(5) of the Constitution of India. When the petitioner is deprived of the said constitutional right, then the further continuance of the detention of the petitioner cannot be sustained in the eye of law. There cannot be any dispute about the same. In that view of the matter, when the further continuance of the detention of the petitioner is not justifiable, then the petitioner is required to be released from detention. This can be done by passing an order of setting aside the impugned detention order.

11. For the foregoing reasons, this petition is allowed. The impugned order of detention dated 27/11/03 passed by respondent no.2 against the petitioner, is ordered to be quashed and set aside. Detenu, Ramvir

Jayrambhai Shrivas (Nai), is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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